

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**November 24, 2004**

**IN RE:**

**PETITION FOR APPROVAL OF AMENDMENT TO  
THE INTERCONNECTION AGREEMENT BETWEEN  
BELL SOUTH TELECOMMUNICATIONS, INC. AND  
BIRCH TELECOM OF THE SOUTH, INC.**

**DOCKET NO.  
04-00299**

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**ORDER APPROVING  
EIGHTH AMENDMENT TO THE INTERCONNECTION AGREEMENT**

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This matter came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 8, 2004, to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the eighth amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and Birch Telecom of the South, Inc.

The original interconnection agreement between these parties was filed on October 12, 2000, and was assigned Docket No. 00-00904. It was approved at a regularly scheduled Authority Conference on December 5, 2000. The first set of amendments was filed on January 19, 2001, under Docket No. 01-00074 and was approved at a regularly scheduled Authority Conference on March 20, 2001. The second amendment was filed on May 10, 2001, under Docket No. 01-00421 and was approved at a regularly scheduled Authority Conference on July 10, 2001. The third amendment was filed on September 16, 2002, under Docket No. 02-01013 and was approved at a regularly scheduled Authority Conference on October 21, 2002.

The fourth set of amendments was filed on October 3, 2002 under Docket No. 02-01109 and was approved at a regularly scheduled Authority Conference on November 18, 2002. The fifth amendment was filed on December 12, 2002, under Docket No. 02-01295 and was approved at a regularly scheduled Authority Conference on February 3, 2003. The sixth amendment was filed on May 17, 2004, under Docket No. 04-00145 and was approved at a regularly scheduled Authority Conference on July 26, 2004. The seventh amendment was filed on July 14, 2004, under Docket No. 04-00209 and was approved at a regularly scheduled Authority Conference on August 30, 2004. The eighth amendment, which is the subject of this docket, was filed on September 17, 2004.

Based upon a review of the amendment, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104 (2004).
- 2) The amendment is in the public interest as it provides consumers with alternative sources of telecommunications services within BellSouth Telecommunications, Inc.'s service area.
- 3) The amendment is not discriminatory to telecommunications service providers that are not parties thereto.
- 4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it "discriminates against a telecommunications carrier not a party to the agreement" or if the implementation of the agreement "is not consistent with the public interest, convenience or necessity." Unlike arbitrated agreements, a state commission may not reject a

negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).<sup>1</sup> Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the amendment is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.

5) No person or entity has sought to intervene in this docket.

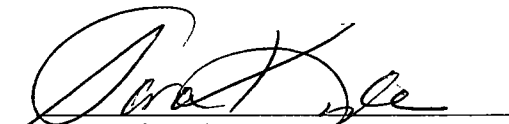
6) The amendment is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104 (2004).

**IT IS THEREFORE ORDERED THAT:**

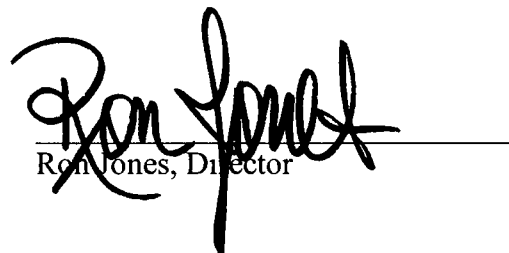
The Petition is granted, and the eighth amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and Birch Telecom of the South, Inc. is approved and is subject to the review of the Authority as provided herein.



Pat Miller, Chairman



Sara Kyle, Director



Ron Jones, Director

<sup>1</sup> See 47 U.S.C. § 252(e)(2)(B)